SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 132

OLLIE OTTO PRINCE, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

[1] [Caption omitted]

[2] In United States District Court for the Western District of Texas

No. 4292 Criminal

(18 U.S.C., Sec. 2113(a) & (d))

UNITED STATES OF AMERICA

vs.

OLLIE OTTO PRINCE

INDICTMENT—Filed March 21, 1949

The grand jury charges:

On or about October 5, 1948, in Hill County, Texas, within the Waco Division of said district, OLLIE OTTO PRINCE, by intimidating Guy Mann, feloniously took from the presence of the said Guy Mann Fifteen Thousand Seven Hundred Sixty-four Dollars ($15,764.00), in money, which said money then belonged to the Malone State Bank, of Malone, Texas, and which said bank was then a banking association incorporated under the laws of the State of Texas, and was then an insured bank under the meaning of the provisions of Section 264, Title 12, United States Code, relating to Federal Deposit Insurance Corporation, and in committing the offense above described the said OLLIE OTTO PRINCE put the life of Guy Mann in jeopardy by the use of a dangerous weapon, to wit, a pistol.

SECOND COUNT

At the time and place and within the jurisdiction, all as described in the first count hereof, OLLIE OTTO PRINCE entered the bank described in said first count, with intent to commit therein a felony, to wit, robbery.

A true Bill,

(S.) G. C. HAGELSTEIN,
Foreman.

(S.) H. W. MOURSUND,
United States Attorney.

Filed: March 21st, 1949.
Endorsed: March 14, 1949—Bond of defendant set at $12,500.00, to be taken by a U. S. Commissioner.

(Signed) BEN H. RICE, JR.,
United States District Judge.

[3] In United States District Court

JUDGMENT, SENTENCE AND ORDER—November 22, 1949

On November 21, 1949, this cause coming on to be heard, came the United States by their District Attorney, and came also the defendant, Ollie Otto Prince, in our own proper person and by counsel. Thereupon a jury was duly selected, empanelled and sworn, to wit, J. O. Ashton and eleven others, and two alternate jurors were selected empanelled and sworn, the defendant was arraigned, the indictment was read and the defendant pleaded not guilty to the charges contained in both counts thereof. Defendant's motion to dismiss the second count of the indictment and his motion to exclude from the evidence the record of his prior conviction were represented to the Court and duly overruled. The trial proceeded with the introduction of evidence on behalf of the United States, at the conclusion of which defendant's motion for an instructed verdict of not guilty was by the Court overruled. The trial then proceeded with the introduction of evidence on behalf of the defendant, and at the conclusion of which both parties rested. Said jury having heard the indictment read, defendant's plea of not guilty thereto, and having heard the evidence introduced and argument of counsel, and having been duly charged by the Court on November 22, 1949, retired in charge of the proper officer to consider of their verdict, and afterwards were brought into open court by the proper officer, the defendant and his counsel being present, and in due form of law returned into open court the following verdict, which was received by the Court and is now here entered upon the minutes of the court, to wit:

> "Verdict of the jury in the case of the United States of America vs. Ollie Otto Prince, No. 4292 Criminal:
>
> We, the jury, find the defendant, Ollie Otto Prince guilty, as charged in the first count of the indictment, and guilty, as charged in the second count thereof.
>
> J. O. Ashton, Foreman"

WHEREFORE, it is considered and adjudged by the Court that the defendant, Ollie Otto Prince, is guilty, as found by the jury, of the offense of having, on or about October

5, 1948, in Hill County, [4] Texas, within the Waco Division of the Western District of Texas, by intimidating Guy Mann, feloniously took from the presence of the said Guy Mann Fifteen Thousand Seven Hundred Sixty-four Dollars ($15,764.00), in money, which said money then belonged to the Malone State Bank, of Malone, Texas, and which said bank was then a banking association incorporated under the laws of the State of Texas, and was then an insured bank within the meaning of the provisions of Section 264, Title 12, United States Code, relating to Federal Deposit Insurance Corporation, and in committing the offense said Ollie Otto Prince put the life of Guy Mann in jeopardy by the use of a dangerous weapon, to wit, a pistol, as charged in the first county of the indictment; and

of the offense of having, at the time and place and within the jurisdiction aforesaid, entered the bank described in said first count, with intent to commit therein, a felony, to wit, robbery, as charged in the second count thereof.

Now, on this the 22nd day of November, 1949, said defendant being brought into open court for the purpose of sentence, and being asked by the court if he had anything to say why the sentence of the law should not be pronounced against him, and he answering nothing in bar thereof.

It is the order and sentence of the Court that the defendant, Ollie Otto Prince, for the said offense by him committed and charged in the first count of the indictment, be imprisoned for the period of TWENTY (20) YEARS in an institution to be designated by the Attorney General of the United States, this sentence to begin upon the expiration of the sentence imposed on March 3, 1949, in Criminal Cause No. 12126, styled, United States vs. Ollie Otto Prince, in the Northern District of Texas, Dallas Division.

It is the further order and sentence of the Court that the defendant, Ollie Otto Prince, for the said offense by him committed and charged in the second count of the indictment, be imprisoned for the period of FIFTEEN (15) YEARS in an institution to be designated by the Attorney General of the United States, this sentence under the second count of the indictment to begin upon the expiration of the sentence imposed herein under the first count hereof, and the said defendant be, and he is hereby, committed to the cus-

tody of said [5] Attorney General or his authorized representative.

It is further ordered by the Court that said defendant be temporarily held in custody by the United States Marshall for the Western District of Texas pending definite designation of the place of confinement for the service of the sentence herein imposed, the disposition of motion for new trial, if filed, and the time allowed for taking appeal. If appeal be taken, the appellant shall be similarly held pending the determination thereof, unless bail is allowed or election made to enter upon service of the sentence. A certified copy of this order shall be authority to said Marshall for his action in the premises.

Ordered in open court at Waco, Texas, this the 22nd day of November, 1949.

(Signed) BEN H. RICE, JR.,
United States District Judge.

Approved:

H. W. MOURSUND,
United States Attorney.
(S.) H. W. MOURSUND,
U. S. Attorney.
Filed: November 22, 1949.

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[6] In United States District Court

ORDER AMENDING JUDGMENT AND SENTENCE—February 27, 1950

On this day the defendant, Ollie Otto Prince, appeared in person and by counsel before the court and within sixty (60) days after receipt by the court of the mandate dismissing the appeal in this cause, at which time the court amended the judgment and sentence entered herein on the 22nd day of November, 1949, as follows:

It is ordered that the following portion of paragraph four of the judgment entered on the 22nd day of November, 1949, be deleted therefrom.

". . . , this sentence to begin upon the expiration of the sentence imposed on March 3, 1949, in Criminal

Cause No. 12126, styled, United States vs. Ollie Otto Prince, in the Northern District of Texas, Dallas Division."

and substituted therefor the following:

". . . , this sentence to begin on the 22nd day of November, 1949."

ORDERED in open court at Waco, Texas, this the 27th day of February, A. D. 1950.

(Signed) BEN H. RICE, JR.,
United States District Judge.

Approved:

(S.) H. W. Moursund,
H. W. MOURSUND,
United States Attorney.

Filed: February 27, 1950.

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[7] In United States District Court

MOTION TO VACATE OR CORRECT ILLEGAL SENTENCE—Filed June 24, 1955

The defendant, Ollie Otto Prince, moves the court to vacate or correct the sentence imposed on him in the above entitled case upon the following grounds and reasons:

1. The sentence was imposed in violation of the Constitution and laws of the United States.

2. The court was without jurisdiction to impose the sentence.

3. The sentence was in excess of the maximum allowed by law in that 18 U.S.C. Sec. 2113 provides the maximum punishment of twenty-five years for the offense for which this defendant was convicted, whereas the defendant was sentenced on two counts of twenty years and fifteen years, respectively, to run consecutively, or for a total of thirty-five years.

This motion is made upon the records and files in the above entitled case.

COHEN & SCHNIDER,
By (S.) Joseph P. Jenkins,

711 Huron Building,
Kansas City, Kansas,
(S.) John W. Laird,
JOHN W. LAIRD,
333 Perry-Brooks Building,
Austin, Texas,
Attorneys for the Defendant.

Filed: June 24, 1955.

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[8] In United States District Court

ORDER OVERRULING MOTION TO VACATE OR CORRECT ILLEGAL SENTENCE—Filed August 1, 1955

The court having heard, on the 12th day of July, 1955, defendant's motion to vacate or to correct illegal sentence, and the court finds that said motion should be overruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, on this 27th day of July, 1955, the defendant's motion to vacate or correct illegal sentence be and the same is hereby overruled.

(Signed) BEN H. RICE, JR.,
Judge.

Filed: August 1, 1955.

[9-10] In United States District Court

NOTICE OF APPEAL—Filed August 4, 1955

The appellant is Ollie Otto Prince, P.O. Box 1200, Leavenworth, Kansas.

Appellant's attorneys are Cohen & Schnider, 711 Huron Building, Kansas City, Kansas; and John W. Laird, 1204 Perry-Brooks Building, Austin, Texas.

The offenses appellant was charged with and convicted of were violation of 18 U.S.C. Section 2113(a) and (d).

On August 1, 1955, this court entered an order overruling appellant's motion to vacate or modify the sentences imposed by this court on the 22nd day of November, 1949, whereby appellant was sentenced to a term of twenty years for violation of 18 U.S.C. Section 2113(a) and fifteen years for violation of 18 U.S.C. Section 2113(d), the second sentence to run consecutively with the first.

The appellant is now confined to the United States Penitentiary, Leavenworth, Kansas.

The above named appellant hereby appeals to the United States Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated August 3, 1955.

COHEN & SCHNIDER,
By (S) Joseph P. Jenkins,
711 Huron Building,
Kansas City, Kansas,
(S) John W. Laird,
JOHN W. LAIRD,
1204 Perry-Brooks Building,
Austin, Texas,
Attorneys for Appellant.

Filed: August 4, 1955.

[11-12] Clerk's Certificate to foregoing transcript omitted in printing.

[13] In the United States Court of Appeals for the Fifth Circuit

No. 15755

OLLIE OTTO PRINCE, *Appellant,*

versus

UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court for the Western District of Texas

OPINION—February 29, 1956

Before BORAH, TUTTLE and JONES, Circuit Judges.

TUTTLE, Circuit Judge: In this appeal from the overruling of his motion for a reduction of sentence,[1] the appellant raises here again the question of merger among the various subsection of 18 U.S.C.A. § 2113, sometimes referred to as the Bank Robbery Act. In 1949 he was convicted under both counts of a two-count indictment of (1) entering a bank insured by the Federal Deposit [14] Insurance Corporation with intent to commit a felony therein and (2) feloniously and by intimidation taking $15,764 of the bank's money from the presence of Guy Mann, while putting the life of said Guy Mann in jeopardy by the use of a dangerous weapon, to wit, a pistol. He was thereafter sentenced to a term of twenty years under the first count and fifteen years under the second, to be served consecutively. The substance of his argument is that the first count is merged in the second, with the result that either one or the other of the sentences must be set aside as illegal.

The same issue was before this court in *Durrett v. United States*, (5 Cir.), 107 F. 2d 438, and *Wells v. United States*, (5 Cir.), 124 F. 2d 355, and each time resulted in a decision contrary to this appellant's position. He urges, however, that subsequent events, in the form of Wells' release from

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[1] Made pursuant to Rule 35, Federal Rules of Criminal Procedure,

prison on the ground that his sentence was illegal,[2] and inconsistent interpretations of the statute by this and other Courts of Appeal, call for a re-examination of the Act and decisions thereunder.

Section 2113, Title 18, was passed by Congress in 1948 to replace 12 U.S.C.A. §§ 588a, 588b, and 588c, which were then repealed. Section 2113 is substantially a reenactment of the former statute, consolidating and slightly modifying the earlier act. Nothing in the reenactment affects the question of merger within the subsections, and both the prisoner and the government agree that for our purposes cases construing the 1934 statute are good authority for an interpretation of § 2113.

[15] The statute, set out below,[3] seems to separate a typical bank robbery, as one might presume it to be, into var-

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[2] Wells v. Swope, (D.C., N.D.Cal.), 121 F. Supp. 718.

[3] "§ *2113. Bank robbery and incidental crimes*

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or

Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $1000 or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

(d) Whoever, in committing, or in attempting to commit any offense defined in subsections (a) and (b) of this section, assaults any person,

ious stages, making criminal the commission of the acts constituting the progressive steps of the criminal undertaking. Thus, one paragraph of subsection (a) [16] makes criminal the entering of a bank[4] or savings and loan association[5] with the intent of committing a felony therein affecting the bank or savings and loan association. The other paragraph of subsection (a) makes criminal the taking of bank property by force and violence or intimidation from the person or presence of another. Subsection (b) makes criminal the taking and carrying away of bank property, when such act is done with intent to steal or purloin. Subsection (c) defines the crime of receiving property stolen from a bank or savings and loan association. Subsection (d) provides a heavier penalty when any of the acts defined in (a) or (b) are accomplished or attempted by putting anyone's life in jeopardy with the use of a dangerous weapon. Subsection (e) provides the death penalty, if the jury so directs, for killing or kidnapping done in committing any offense defined in the section.

Because of this statutory delineation of the various steps in a typical bank robbery, the question has arisen whether Congress intended that the criminal who succeeds in his unlawful enterprise to the extent of [17] accomplishing more than one phase of it, as the statute defines the phases,

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or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or punished by death if the verdict of the jury shall so direct.

(f) As used in this section the term "bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(g) As used in this section the term "savings and loan association" means any Federal savings and loan association and any savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation."

[4] As defined in § 2113(f).

[5] As defined in § 2113(g).

can be punished for more than one crime. The Sixth Circuit has adopted the view that he cannot, *Simunov v. United States,* (6 Cir.), 162 F. 2d 314, and the Ninth Circuit in a clear dictum has indicated that it is in accord with this view. *Barkdoll v. United States,* (9 Cir.), 147 F. 2d 617.[6]

This construction of the statute cannot be supported by reference to the doctrine of merger, because except for the offenses of bank petit larceny and bank grand larceny defined in subsection (b), no crime defined in the statute contains all the elements of another crime defined therein.[7] Aside from the two paragraphs of subsection (b), the offenses most identical to each other are those of larceny as defined in (b) and robbery as defined in the first paragraph of (a). These are differentiated, however, by the fact that larceny under the statute requires "the intent to steal or purloin," while this element of specific criminal intent is omitted from the first paragraph of (a), thus apparently making sufficient [18] for conviction under (a) only the general criminal intent to do the prohibited acts themselves.

Indeed, the view that subsections (a) and (b) constitute but one crime is not grounded on the doctrine or merger, but rests instead on presumed Congressional intention. Legislative history is not cited to sustain this interpretation, however. Instead, it is based on Congress's aims as manifested by the statute itself, the opinion of those who follow this interpretation being that since the main purpose of the statute is to make robberies of FDIC-in-

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[6] The Eighth Circuit has made the following analysis of the first paragraph of (a), in connection with (d) and (e): "Congress, in enacting Sections 588b and 588c, was dealing with the crime of bank robbery, and not with forcible taking, putting in fear, assault, putting lives in jeopardy, killing and kidnapping as distinct crimes. In effect, Congress created three classes of bank robbery according to degree; first, that which was accompanied by force or putting in fear; second, that which was accompanied by assault or putting lives in jeopardy; and, third, that which was accompanied by killing or kidnapping. Proof of robbery of the second class would also prove robbery of the first class, and proof of robbery of the third class would prove robbery of both the first and second classes." Hewitt v. United States, (8 Cir.), 110 F. 2d 1, 11.

[7] This is the general test with regard to merger. Miller on Criminal Law § 13.

sured banks criminal, the statute will support only a conviction for the single offense of bank robbery or one phase thereof.[8]

In this respect, however, § 2113 is not an unusual type of enactment, and other statutes which punish separately the various steps of a criminal undertaking have not been construed as limited to supporting only one conviction. For example, under 18 U.S.C.A. §§ 659 and 2117, one may be convicted of the separate crimes of breaking the seal on a railroad car containing interstate shipments of freight, entering the car with intent to steal, and stealing property from the car. *Greenburg v. United States,* (7 Cir.), 253 Fed. 728. In applying this statute, formerly combined in 18 U.S.C.A. § 407, one court observed:

> "We are unable to read the statute other than that Congress intended to make each and every separate act named, a separate crime. [Citing [19] cases.] If the construction seems harsh, it must also be appreciated that there is a vast difference between the maximum and the minimum sentence provision as there is a vast difference between the action and motives of different offenders. In the trial judge, there is lodged wide discretion, and if misjudgment results in too severe judgments, the accused may secure relief through executive clemency, as well as by parole." United States v. Carpenter, (7 Cir.), 143 F. 2d 47, 48.

We reach the same conclusion in this case. Under the 1934 statute, the weight of authority sustained convictions of more than one offense defined in what is now §2113(a) and (b). *McNealy v. United States,* (5 Cir.), 164 F. 2d 600; *Rawls v. United States,* (10 Cir.), 162 F. 2d 798; *Wells v. United States,* (5 Cir.), 124 F. 2d 334; *Durrett v. United States,* (5 Cir.), 107 F. 2d 438. In only one case was such a conviction struck down. *Simunov v. United States,* (6 Cir.), 162 F. 2d 314. Nevertheless, Congress reenacted the statute substantially as before. In the light of this fact, and of the analogous precedent of Congress's previous use of this same statutory pattern in other areas of the criminal

[8] See Simunov v. United States, (6 Cir.), 162 F. 2d 314, 315; Barkdoll v. United States, (9 Cir.), 147 F. 2d 617; Hewitt v. United States, (8 Cir.), 110 F. 2d 1, 11.

law, we find ourselves unable to agree that Congress intended that violations of different parts of §2113(a), (b) and (d) would constitute only one crime. More important, the plain terms of the statute itself compel a different conclusion.

The issue is somewhat complicated by the fact that subsection (d) defines as criminal certain acts when [20] done in committing or attempting to commit any offense defined in (a) or (b). It is unanimously held that when one is charged with committing or attempting to commit an offense defined in (a) or (b), and also the aggravating acts defined in (d) in conjunction therewith, only one conviction will stand. *Heflin* v. *United States,* (5 Cir.), 223 F. 2d 371; *Ward v. United States,* (10 Cir.), 183 F. 2d 270; *Simunov v. United States,* (6 Cir.), 162 F. 2d 314; *Gant v. United States,* (5 Cir.), 161 F. 2d 793; *O'Keith v. United States,* (5 Cir.), 158 F. 2d 591; *Crum v. United States,* (9 Cir.), 151 F. 2d 510; *Miller v. United States,* (2 Cir.), 147 F. 2d 372; *Vautrot v. United States,* (8 Cir.), 144 F. 2d 740; *Hewitt v. United States,* (8 Cir.), 110 F. 2d 1. Cf. *Holiday v. Johnston,* 313 U. S. 342, 61 S. Ct. 1015, 85 L.Ed. 1392. The rationale of these cases is that subsection (d) defines an aggravation of the same offenses as are made criminal in (a) and (b). The same theory has been advanced with regard to subsection (e). *Crum v. United States,* (9 Cir.), 151 F. 2d 510.

The problem usually arises, as it is presented here, when two crimes defined in (a) or (b) are alleged, and it is further alleged that one of them was done in the aggravated manner defined in (d). Obviously, under the authorities just cited, the act made criminal in (a) and (b) which is performed in the aggravated manner described in (d) is merged with the latter offense. Is the other subsection (a) or (b) crime also merged? The answer is unquestionably no. In *Heflin v. United States,* (5 Cir.), 223 F. 2d 371, we reached the opposite conclusion, because the government there conceded the [21] point and agreed to a corresponding modification of Heflin's sentence, but we do not wish that case to stand as authority for the view that in this respect the sentence was illegal. It was illegal in another respect, however, and was properly reversed as to one of the counts in that it committed Heflin for both robbery

as defined in (a) and an aggravation of the same offense under (d).

The appellant here was not sentenced for an offense defined in (a) or (b) and also for the same offense committed in an aggravated manner as defined in (d). He was sentenced for separate violations of (a) and (b), one of those violations having been committed in an aggravated manner. He was, therefore, legally convicted and sentenced for two separate crimes, since the aggravation merges only with the offenses with which it is charged (and there may of course be more than one aggravated offense), and not with all related offenses as well.

The judgment is

Affirmed.

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[22] In United States Court of Appeals

No. 15755

OLLIE OTTO PRINCE

versus

UNITED STATES OF AMERICA

JUDGMENT—February 29, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

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[23] Clerk's Certificate to foregoing transcript omitted in printing.

[24] Supreme Court of the United States

[Title omitted]

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—June 4, 1956

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 997 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 4, 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956 997269 223

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 132

OLLIE OTTO PRINCE, PETITIONER

vs.

UNITED STATES OF AMERICA

ORDER GRANTING MOTION TO ENLARGE THE RECORD—

November 5, 1956

ON CONSIDERATION of the motion of counsel for petitioner to enlarge the record in this case,

IT IS ORDERED by this Court that the said motion be, and it is hereby, granted.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

EXCERPTS FROM TRANSCRIPT OF TESTIMONY—Printed pursuant to order of this Court dated November 5, 1956 granting motion to enlarge the record.

Page 3—Testimony of Guy Mann, Direct Examination

Guy Mann is the vice-president of the Malone State Bank at Malone, Texas.

Pages 4 and 5

Q. Do you recognize the defendant in this case, Ollie Otto Prince?

A. Yes, sir.

Q. Did you know him on October 5, 1948, or before that date?

A. No, sir.

Q. Did you see him on the date of October 5, 1948?

A. I did.

Q. Just please tell the jury under what circumstances and how you met him and what happened.

A. Well, I would go to the back end of the bank—we have two vaults; one vault in the front is used for the bank and one in the back for the customer. One of my customers came in and wanted some papers.

Q. What was his name?

A. Willie Geltmeier. He and I went to the rear end of the bank; there are three rooms. We went into the third room and Mr. Geltmeier was ahead of me two or three paces. As he entered the room, Mr. Prince came in the side door. We three formed a kind of a triangle the way we were standing and he asked us where a cotton office was.

Q. Who did?

A. Mr. Prince.

Q. This man over here?

A. Yes. And, my customer stepped over toward him and pointed back—the doors were open, through the other room where you could see across over there at that time. Up until that time I hadn't suspected anything, but after he answered and Mr. Prince failed to move on, then I did suspicion something. * * *

A. I turned to go back to the front of the bank and after I got to the first door, Mr. Prince met me with a gun in my side. I pulled through the door and he caught me right astride of the door facing.

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Q. Was it light in the bank when this occurred?

A. Yes.

Q. Do you remember what time of day it was?

A. Just guessing at it, I would say he contacted me somewhere around 11:40, not later than 11:45.

Q. In the morning of October 5, 1948?

A. That's right.

Q. Were there any lights on in the bank?

A. Yes.

Page 10—Cross-Examination

Q. You say the man that robbed you came in from that side street?

A. Yes.

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Q. How long intervention was it from the time you saw him come into the bank until the robbery was completed and he left?

A. Oh, I would say—this is a guess—I would say ten minutes.

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Q. No other customer came into the bank for ten minutes?

A. Yes, that's right.

Q. That was the very middle of cotton-picking season on October 5?

A. Yes.

Q. And, you have a lot of customers in there during the cotton-picking time?

A. Yes.

Q. There were a lot of people on the street in Malone?

A. Yes, a good many people.

Page 24—Testimony of Francis Kaddatz—Cross-Examination

Q. You didn't see which door he came in?

A. No, sir, but he would have to go to the back because I would have seen him if he went through the front.

Q. The front door was not locked?

A. No.

Q. What time of day did you say it was?

A. Right before noon; it was exactly ten minutes before twelve; when he walked into the bank, I looked at my watch.

Page 32—Testimony of Willie Geltmeier—Direct Examination

Q. On or about October 5, 1948, did you have occasion to be in the Malone State Bank?

A. I went in there on some business.

Q. Do you know about what time of day you went in there?

A. Shortly before noon.

Q. About how long were you in there on that occasion?

A. Oh, I would say about ten minutes or twelve.

Q. Did the bank get robbed while you were in there?

A. Yes.

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Q. Tell the jury, please, and the Court, concerning the bank robbery from the time somebody entered the bank until they left.

A. I went in on some business and walked to the bank to get some papers. I seen somebody looking through the glass into the bank and he came in the back door and he asked me if that was a cotton office and I told him it was across the street. Lewis Linz runs the cotton office. He made an attempt to get out, but he didn't; he stopped at the back door. At that time Mr. Mann came to the back and he stopped him and went in the bank.

Q. What did he do?

A. He asked Mr. Mann if he had any money, and Mr. Mann said that he didn't. He said, "I want it."

Q. Then what did he do?

A. He pulled a gun on us and marched us to the vault. Mr. Mann got him some money there.

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